

**NEBRASKA STATE BOARD OF HEALTH MEETING**

**DRAFT MINUTES – January 27, 2014**

**ATTENDANCE NOTIFICATION.** A regular meeting of the State Board of Health was called to order by the Chair, Dale Michels, MD, at 11:00 AM on January 27, 2014 in the Conference Room of the Nebraska Bar Association in Lincoln. Copies of the agenda were mailed to board members, news media, and other interested parties prior to the meeting, and posted on the Health and Human Services website. The following members were present: Janet Coleman (AM only); Edward Discoe, MD; Shane Fleming, MSN, RN; Russell Hopp, DO; Diane Jackson, APRN; Ken Kester, Pharm D, JD; Dale Michels, MD; Debra Parsow; Paul Salansky, OD; John Tennity, DPM; Jeromy Warner, PsyD, LP; Gary Westerman, DDS; and Daryl Wills, DC. Quorum met.

Members not in attendance: Tony Moravec, DVM; Roger Reamer, MBA; Rich Robinson, PE; Wayne Stuberg, PhD, PT

Staff attending: Ron Briel, Monica Gissler, Helen Meeks, Kay Pinkley, Marla Scheer

**APPROVAL OF ANNUAL REPORT.** The Board of Health annual report for 2013 was discussed. Copies will be sent to Governor Heineman, Lt. Governor Heideman, members of the HHS Legislative Committee, professional board chairs, local health directors, health care professional associations, key HHS staff, and other interested parties. Dr. Wills made a motion to approve the annual report; Dr. Westerman seconded. Call for vote on motion - voting yes: 12 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 0. Motion carried, and report approved.

**LEGISLATIVE DISCUSSION.** Dr. Kester, Vice Chair of the Public Health, Education and Legislation Committee, listed bills of interest to his committee, as determined during a committee conference call held on January 23, 2014, and committee discussion held the morning of January 27<sup>th</sup>. Conference call participants included Mr. Reamer, Dr. Kester, Ms. Jackson, Dr. Michels, Dr. Warner, and staff Monica Gissler and Helen Meeks.

Dr. Kester explained the three categories that the Board of Health places legislative bill in: Category 1: Take action on; 2: Monitor and take possible action on, and 3: monitor.

BILL	INTRODUCER	BOARD OF HEALTH PRIORITIES 2014
807	Harms	Change provisions relating to provisional operator's permits, interactive wireless communication devices, and occupant protection systems and update references to certain federal provisions. (Make primary offense.)
843	Johnson	Change provisions relating to membership on the Board of Veterinary Medicine and Surgery. (No two members work for same employer.)
916	Crawford, Hansen, Krist	Eliminate integrated practice agreements and change provisions regarding nurse practitioners.
1017	Krist	Change and transfer pharmacy, prescription, and drug provisions.

<b>2013 CARRY OVER BOH PRIORITY BILLS</b>		
187	Nelson	Appropriate funds to the Department of Health and Human Services to fund the Dental Health Director. Portions amended into LB195. ??
428	Haar	Change permitted practice provisions for certified nurse midwives.
526	Howard	Change optometry licensure and certification to perform minor surgery and use pharmaceutical agents.
527	Howard	Change optometry licensure and certification to use pharmaceutical agents.

Board of Health action means providing testimony or sending a letter either lending support or stating concerns regarding a bill. For each of the support and opposition bills listed above, the Board will send a letter and/or testify.

Dr. Kester made a motion to approve these legislative bills as the official Board of Health bills of interest for 2014, with the exception of LB523. Call for vote on motion - voting yes: 12 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 0. Motion carried. Whenever the Board of Health takes a position on a piece of legislation, a supermajority vote of 12 is required.

**RECESS.** The Board of Health recessed at 11:35 AM for lunch. Motion made by Dr. Wills; seconded by Dr. Westerman. All in favor by voice vote.

Dr. Michels called the meeting back to order at 1:03 PM in Room 1023 of the State Capitol Building, and asked everyone to silence their cell phones. The following members were in attendance: Edward Discoe, MD; Shane Fleming, MSN, RN; Russell Hopp, DO; Diane Jackson, APRN; Dale Michels, MD; Debra Parsow; Paul Salansky, OD; John Tennity, DPM; Jeromy Warner, PsyD, LP; Gary Westerman, DDS; and Daryl Wills, DC. Quorum met.

**APPROVAL OF AGENDA.** Dr. Michels asked if there were any changes to the agenda for the meeting today. There being no objections, the agenda was approved by consent calendar.

**APPROVAL OF MINUTES.** Dr. Michels asked if there were any changes to the minutes from the November 18, 2013 meeting. Dr. Kester made a motion to approve the minutes, and Dr. Wills seconded. There being no objections, the minutes were approved unanimously by roll call vote.

**CHAIRPERSON'S REPORT.** Dr. Michels reported on the following:

1. Asked if anyone has attended any professional board meetings that they would like to report on? There were none.

A current 2014 Professional Board Meeting Schedule was provided. Information may be accessed at [http://dhhs.ne.gov/publichealth/Pages/crl\\_brdmtgs.aspx](http://dhhs.ne.gov/publichealth/Pages/crl_brdmtgs.aspx). It is important that you let Monica know in advance when you plan to attend a meeting, and if you plan to attend the entire meeting or just a portion. If the meeting includes a working lunch, a lunch will not be

ordered for you, unless specific arrangements are made.

2. We welcome a new nurse to the Board, Shane Fleming of Columbus. Please tell us a bit about yourself. He works in transitional care at Columbus Community Hospital. His previous experience includes being a paramedic for 10 years and working as a flight nurse.
3. This is the last meeting for Dr. Tennity. The Governor's office is currently recruiting for a replacement.
4. Congratulations to Dr. Tony Moravec and his family! On November 23<sup>rd</sup> they welcomed a baby boy Nathaniel Vance, 7 lbs. 11 oz. He is not with us today because he was invited to Nashville to record a television show that will be broadcast multiple times nationally. We'll ask him more about that at our next meeting.
5. Today we hosted senators for our annual legislative luncheon. We received positive feedback for holding it in the Capitol building. Thanks goes to Marla for coordinating the food. Please pay Monica if you have not already.
6. Ms. Meeks provided an update on Dave Montgomery's former position. Four applicants were recently interviewed. Hopefully the position will be filled prior to the March meeting.
7. New Committee assignments are effective for this meeting.
8. As of now, we have no plan to meet outside of Lincoln in September. If anyone has any suggestions, please send me an email, or bring it up under New Business later in our meeting.

**CHIEF MEDICAL OFFICER'S REPORT.** Dr. Acierno asked that any questions for him be sent to him prior to meeting day. He answered a question from Dr. Hopp on TREC Analysis of Newborn Screening.

**LEGISLATIVE UPDATE.** Bryson Bartels presented on the DHHS legislative priorities and bills they are tracking. This is Day 13 of a short session. The Department has three bills this year:

- LB 260 (Gloor) Change data and information for Nebraska Behavioral Health Services Act.
- LB 711 (Watermeier) Contamination of property of clandestine drug labs.
- LB728 (Harms) Criminal background checks for employees of DHHS Division of Developmental Disabilities.

### **COMMITTEE REPORTS.**

**Rules and Regulations Committee** – Dr. Warner, Committee Vice Chair, reported.

1. Discuss and vote on approval of the following new regulations:

172 NAC 69 Licensure of Crematories (staff: Kris Chiles)

These regulations were drafted in conjunction with a 7-member workgroup comprised of persons representing the funeral directing profession and owners of crematories. They are new regulations and address the following areas:

- General licensing and inspection requirements;
- Standards of operation, processes and procedures;
- Discipline, nuisance and abatement penalties and injunction; and
- Provisions for reinstatement and fees.

Authority for these regulations is found in Neb. Rev. Stat. Sections 4-108 to 4-114, 71-1355 to 71-1385, and 81-3117(7).

A Public hearing was held on Thursday, December 19, 2013; four individuals testified. The hearing summary was given to the Board of Health members.

Call for vote on motion - voting yes: 12 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 0. Motion carried, and approved.

172 NAC 91 Licensure of Perfusionists (staff: Becky Wisell)

These are new regulations that include provisions from the Perfusion Practice Act and the Uniform Credentialing Act. A public hearing was held regarding these proposed regulations on December 12, 2013. No comments were received regarding these regulations.

The Board of Medicine and Surgery met on Friday, January 24<sup>th</sup>, 2014, and voted to adopt this chapter of regulations.

Call for vote on motion - voting yes: 12 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 0. Motion carried, and approved.

2. Discuss and vote on approval of the following amended regulations:

172 NAC 120 Licensure of Optometrists (staff: Becky Wisell)

These are amended regulations that include provisions from the Optometry Practice Act and the Uniform Credentialing Act. A public hearing was held regarding these regulations on December 12, 2013. Attached is a Hearing Summary of comments that were received at the public hearing which includes responses from the Board of Optometry. The Board of Optometry met on January 10, 2014, reviewed the hearing comments, recommended several changes based on the hearing comments, and adopted this chapter of regulations.

Call for vote on motion - voting yes: 12 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 0. Motion carried, and approved.

3. Review the following amended regulations:

177 NAC 1 Determination of Alcohol Content in Blood or Breath (staff: Kris Chiles).

These regulations were drafted by an attorney in the Department of Motor Vehicles in conjunction with the Department of Health and Human Services and reviewed by a workgroup made up of persons representing the following agencies:

- Department of Motor Vehicles
- Lincoln City Law Department
- Omaha Police Department
- County Attorneys
- Department of Health and Human Services Legal
- Nebraska Law Enforcement Training Center
- Lincoln Police Department
- Lancaster Sherriff's Department
- Nebraska Department of Roads
- State Patrol
- Lancaster County Attorneys
- State Attorney General's Office

Major changes to the regulations include:

1. Change the term 'record card' to 'test record' through-out the regulations and further defines what is a 'test record' in relationship to evidentiary breath testing devices. This more accurately reflects current terminology.
2. Revises the definition of 'valid permit' due to some recent court cases that questioned permits issued under a prior version of the regulations.
3. Adds a definition of 'wet bath simulator solution'; changes issuance of a 'duplicate permit' to a 're-issued permit'.
4. Removes the minimum set number of hours of training required to obtain a Class B permit and retains the topic areas that must be covered during such training in order to be in line with the current testing procedures. In years past, the training was provided by a DMV employee onsite and then the officers took a written test. During the past 2 years, the test has migrated to an on-line training program with several modules. Each module includes an examination at the end of the module and an overall test at the end of the training. The officers can take the training on their own time and it allows for those who are more familiar with the devices to move quickly through the materials. This has been

tested for 2 years now and is very effective. Additionally, the officer completes a competency test on the device under the supervision of an on-site monitor. The examination materials are available to our staff through Talent Edge and we are notified when new results are available. The process runs extremely smooth.

5. Removes the model #'s for the Intoxilyzer and Data Master breath testing devices, and allows all instruments under these names to be acceptable. This allows for the transition of new instruments (as others become outdated) without having to revise the regulations each time.
6. Includes dry gas standard in addition to alcohol breath simulator solutions (wet bath) to be acceptable for calibrating breath testing devices. Many states currently use the 'dry gas standard' and the Lincoln Police Department has requested this addition.
7. Eliminates the requirement to have the alcohol simulator solution vender complete Attachment 1, which is the affidavit that is currently used for verifying the value and testing technique for certified simulator solutions and also infers that the Department has approved said vendor of the solutions. This allows officers to choose their own vendors and may diminish issues that have been identified in past court cases (the vendor is out of state, difficulty with accuracy of completing the form, etc.).
8. Clarifies language relating to breath testing device calibration by either dry gas standards or wet bath simulator solutions.
9. Revise applications to comply with the proposed changes; and
10. Technical, editing and re-numbering changes to the regulations have also been made.

Authority for these regulations is found in Neb. Rev. Stat. Sections 37-1254.01 to 37-1254.08, 60-6,101 to 60-6,107, 60-6,196 to 60-6,211.09 and 81-3117(7). A Public hearing was held on Thursday, December 19, 2013; there was NO written or verbal testimony. Dr. Hopp asked about the Quality Assurance process used for the testing devices and Ms. Chiles explained it.

4. Review Updated UCA Regulations Status Report.

**Credentialing Review (407) Committee** – Ms. Parsow, Committee Chair, presented.

Credentialing Review documents may be accessed at [http://dhhs.ne.gov/Pages/reg\\_admcr.aspx](http://dhhs.ne.gov/Pages/reg_admcr.aspx).

- Dental Anesthesia technical review proposal – testimony and recommendations. Dr. Tennity chaired the Technical Review Committee, and presented. The proposal would eliminate the requirement that dentists must have a permit to administer nitrous oxide, but would require them to acquire permits to provide other types of sedation. Currently, dentists are only required to have a permit to administer nitrous oxide. The proposal would require dentists to comply with current American Dental Association standards and guidelines for anesthesia. Current

Nebraska requirements do not comply with these standards and guidelines.

Charles Bauer, DDS testified for, explaining that there is nothing currently in statute that covers minimal sedation. This has been an issue for over five years. Deborah Schardt, RDH, testified on behalf of the Nebraska Dental Hygienist Association. She explained that this was an amended proposal, and the Dental Auxiliary portion had been dropped from the application without an explanation. For patient safety and protection, the NDHA feels there needs to be specifics on “adequate supervision” training for assistants. Dr. Discoe asked what the NDA position is on the NDHA, but Ms. Schardt stated that she didn’t know. Dr. Bauer explained that hygienists had been included in the original application.

There was a Committee motion to approve the entire proposal. Voting yes: 11 (Discoe, Fleming, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 1 (Hopp); not voting: 0. Motion carried, and report approved.

The ancillary recommendation on the dental anesthesia proposal by the Credentialing Review Committee of the Board of Health on January 9, 2014:

The Board of Dentistry should ensure that the content of the training courses to be used to train dentists in anesthesia procedures are consistent with recent American Dental Association guidelines, and that the rules and regulations to be developed for these training courses are also consistent with these guidelines.

Call for vote on motion - voting yes: 11 (Discoe, Fleming, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 1 (Hopp). Motion carried, and ancillary recommendation approved.

- Approve the technical report for Optometry.

The original proposal sought to make the following changes to optometry scope of practice:

1. Removing specific restrictions on prescribing oral steroids, oral anti-glaucoma medications and oral immunosuppressive medications.
2. Allowing the injection of medication for the treatment of anaphylaxis, and the injection of pharmaceutical agents into the eyelid for the treatment of cysts, or infected or inflamed glands of the eyelid.
3. Removing the restriction on minor surgical procedures to allow the treatment of cysts, or infected or inflamed glands of the eyelid.

The Board of Health made their recommendations at their November 17, 2013 public meeting.

The outcome of the vote of the Credentialing Review Committee of the Board on the applicants’ proposal was a tie. The members of the full Board of Health recommended

approval of the applicants' proposal. In the last sentence, "at" has been changed to "by."

The Board members approved the following ancillary recommendation:

That a standardized training program in minor surgical procedures be required as a minimum requirement for Nebraska optometrists who seek to perform such procedures, and that this training program consist of 'hands-on' training on actual patients, and that it be taught in an accredited optometry program *by* an accredited college of optometry.

Call for vote on motion - voting yes: 12 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 0. Motion carried, and report approved.

- Advising the Full Board on the Appointment of the Certified Nurse Midwifery Technical Review Committee Composition

Volunteers from the Nebraska Credentialing Review Public Member Pool:

Tom E. Bassett	(Lincoln)
Jeffrey L. Howorth	(Omaha)
Wendy McCarty, Ed.D.	(Grand Island)
Michael Millea, Ph.D., L.M.H.P.	(Omaha)
Corrinne Pedersen	(Lincoln)
Stephen M. Peters, BA, MA	(Omaha)
Ben Greenfield, L.P.	(Hickman) – Potential back up member.

Volunteers from the Nebraska Health Professional Pool:

Jeff Baldwin, Pharm.D., R.P.	(Omaha)
Marcy Wyrens, R.R.T.	(Lincoln)

Ms. Coleman volunteered to serve as Chair of the Technical Review Committee. Call for vote on motion for potential members: voting yes: 11 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Westerman, Wills); voting no: 0; not voting: 1 (Warner). Motion carried, and report approved.

**Professional Boards Committee.** Ms. Jackson, Committee Chair, reported. Committee members conducted 3 interviews this morning; one had been cancelled yesterday.

1. Nursing Entities – Karen Bowen, RN. Main topics included how various nursing entities overlap in their scope, and publications of non-disciplinary actions.
2. The committed was scheduled to conduct one interview for the current vacancy on the Board of Nursing, but the applicant withdrew earlier this morning. We had no applicants for the Board of Hearing Instrument Specialists and Board of Registered Environmental Health Specialists vacancies.

3. 2014 Vacancy Schedule – revised format. The 2014 vacancy list is long, but includes many incumbents who are eligible for reappointment.
4. Other Committee updates.
5. Carry over items:
  - Information on Inactive Boards – Invite Rene Tiedt to March 24<sup>th</sup> meeting
  - Professional Board chair invitations and guidelines
  - Tracking system for good applicants

**Public Health, Education and Legislation Committee:** Dr. Kester, Committee Vice Chair, reported.

Board members shared their observations regarding the pros and cons of the Legislative luncheon.

- # Public Health Recognition – Health 360 Project Access. This program provides uninsured individuals and their families in Lancaster County, Nebraska access to medical care and medications on a sliding fee based on household income. There are three components: medical assistance started in 2003; access to specialty medical care started in 2007; and access to primary care started in 2012. They collaborate with many community agencies and connect with over 80 local human services agencies.

Call for vote on motion - voting yes: 12 (Discoe, Fleming, Hopp, Jackson, Kester, Michels, Parsow, Salansky, Tennity, Warner, Westerman, Wills); voting no: 0; not voting: 0. Motion carried, and recognition approved. More information on this program will be posted on the Board of Health website: [http://dhhs.ne.gov/Pages/reg\\_bdhealth.aspx](http://dhhs.ne.gov/Pages/reg_bdhealth.aspx).

#### **UNFINISHED BUSINESS.**

Dry Needling Letter. Dr. Wills asked Senator Campbell and Dr. Acierno about this during the luncheon. Dr. Acierno will follow up on it.

#### **NEW BUSINESS.**

- Board of Health By-Laws; Committee. Dr. Michels appointed the following committee: Board of Health officers Michels, Salansky and Wills, and Board of Health members Discoe and Westerman. All Board of Health members may submit suggestions and recommendations for potential changes or review. There will be a conference call to start the process.
- Location for September Meeting. Dr. Michels will check with some contacts in the Northeastern corner of the state for possible options.

**PUBLIC COMMENTS.** None.

**PREPARATION FOR NEXT MEETING.** The next regular Board of Health meeting will be March 24, 2014 at the State Office Building in Lincoln.

**ADJOURN.** There being no further business, the meeting adjourned at 2:37 PM. Minutes were taken by Monica Gissler. This draft has not yet been reviewed by Board members.

***NOTE:*** If you would like to receive these minutes electronically instead of receiving a hard copy, please send a request to the email address below. Please also inform staff if you would like to be removed from this distribution list altogether.

*If you would like any attachments mentioned in these minutes, or have other questions, please contact Monica Gissler, 402/471-6515, Fax 402/471-0383, or email at: [monica.gissler@nebraska.gov](mailto:monica.gissler@nebraska.gov).*

3/10/14, mcg